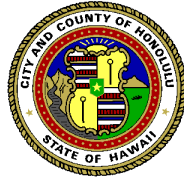


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: February 17, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
William "Bill" Shanafelt, Investigator III
Derek Mayeshiro, Deputy Corporation Counsel, Department of the
Corporation Counsel (COR)

Absent: Hon. Victoria Marks (ret.), Chair
Laurie A. Wong, Associate Legal Counsel (ALC)
Lisa P. Parker, Legal Clerk III

Stenographer: Kristine Bigornia, Legal Clerk I

MINUTES OF THE FEBRUARY 17, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

The Ethics Commission members had received a copy of the Open Session Memo, dated February 11, 2016. Vice Chair Lilly called the meeting to order at 11:35 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the January 20, 2016 Meeting.

Commissioner Suemori moved to approve the open session minutes of the January 20, 2016 meeting. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.

B. Executive Director and Legal Counsel's Administrative Report. (Written)

The EDLC announced to the Commission that there was a correction that needed to be made. He directed the Commission to look at Item 6, "FY 2017 Budget", at the first bullet point, the last line, which read "\$449,000," and that it should be, "\$49,000." The EDLC made no further corrections or additions.

1. Staff's Priorities for FY16 – FY17.

Commissioner Suemori referred to Page 1, regarding priorities, and asked the EDLC how many City employees would need training, and the EDLC responded that there were 9,300 employees.

Commissioner Suemori asked the EDLC if he could train all 9,300 in a year. The EDLC responded that it would depend on using the old method, and confirmed that all 9,300 City employees can be trained in a fiscal year.

Commissioner Suemori asked the EDLC how he would plan on training all the employees. The EDLC explained that there are two processes: 1) work out the Mindflash process; and 2) get funding for the Mindflash, and that this method would allow the departments to get the program out to all City employees, individually, which would then enable them to do the ethics training right at their desks.

Commissioner Suemori asked the EDLC, when he would know about the budget. The EDLC responded that it would not be any sooner than June, because staff needed help from City Council. She then asked if it could be by next fiscal year, and the EDLC confirmed and further stated that staff was hoping to start this fiscal year, but there is no money.

Commissioner Suemori asked the EDLC if all 9,300 employees would be able to complete their ethics training by June 2017, and the EDLC confirmed and further stated that it would be throughout the fiscal year. Commissioner Suemori further stated that staff should have 18 months, instead of 12 months, to train the employees. The EDLC clarified that staff would need to start in July, because that is when we will have the actual budget.

Commissioner Suemori asked the EDLC if the staff had something from now until June 2016 to train the employees. The EDLC responded that staff was getting the Mindflash program ready, and that the ALC had sent out a highlight.

Commissioner Suemori asked the EDLC how much would it cost and wanted a total amount. The EDLC confirmed that the \$6,000 was the total amount and further stated that the program is also self-tracking and that staff would not need to worry about tracking, who took the training or not, and that it is very flexible and that it modifies quizzes.

Commissioner Amano asked the EDLC if the Mindflash would be a one-shot deal. The EDLC confirmed and explained that \$6,000 is per training, because the license needs to be purchased. The EDLC further stated that staff conducts training to the employees every two years.

Commissioner Suemori asked the EDLC to explain “timely” response. The EDLC responded that there is no real definition and that in general, the average days to respond to a Request for Advice (“RFA”) is 10 days and can usually be done quicker than that because some are straight forward. For the Complaints Requiring Investigations (“CRI”), if it does not go to probable cause, the average is five months. If a case does reach probable cause and all the way to a contested hearing, the average is a year.

Commissioner Suemori asked the EDLC if it could be set in general guidelines. The EDLC stated that staff can set it, if that is what the Commission thinks is appropriate. Commissioner Suemori further stated that it would be something that the EDLC would want to have as his own guidelines so that he would have an idea of what he was doing. The EDLC then stated that it would be internal guidelines, and Commissioner Suemori responded that it’s called “Operating Procedures,” and the EDLC confirmed.

Commissioner Suemori asked the EDLC what would formulate and present a Notice of Alleged Violation (NOAV) and what would be the requirement for a contested hearing. The EDLC explained that from the staff’s point-of-view, if there is a probable cause violation and if a case is serious enough to bring to the Commission.

Commissioner Suemori asked the EDLC what would be grounds for a “serious” violation. The EDLC responded that it would be suspension without pay or termination of employment, which are realistic options. Commissioner Suemori asked if the EDLC had guidelines for the NOAV, and the EDLC confirmed that there are general guidelines and that the staff goes through the process under Rule 5 in the Ethics Commission Rules of Procedure (“ECRP”). The EDLC further stated that if staff finds probable cause and if it’s not something that should be sent over to the department, as opposed to the Commission, and then staff would present a probable cause motion to the Commission, and then a NOAV. Commissioner Suemori asked the EDLC if it would take five months, and the EDLC confirmed that five months was the average.

Commissioner Suemori asked the EDLC for clarification of, “when you formulate.” The EDLC responded it was a fancy word for “draft,” but it also means, “to do the research, to prep the factually and the legality of a case, which is then brought before the Commission. She further asked if it was the same thing as “timely responses.” The EDLC explained that the vast majority of the cases do not get to the probable cause stage, and the probable cause stage requires a lot more detailed review. Commissioner Suemori reiterated that there is a ten-day staff processing to determine probable cause, which usually takes five months under Rule 5, thereafter the EDLC would decide if it is a suspension and termination, but beyond that is CRIs, non-probable cause. She concluded that the EDLC is doing the same thing and that he would be doing his timely response, as required.

The EDLC responded that there is a semantic difference. On one hand, the discussion is about CRI's.

Vice Chair Lilly stated that they overlap, and that RFA would have been resolved.

Commissioner Suemori stated that all of this is an intake process of an operational manual and that it's a process sequential. She explained that there would be only one process for the person calling in and how it would be processed to the end.

Vice Chair Lilly agreed that it was one process.

The EDLC explained there are two bullet points, but was not suggesting that there were two different processes. He further explained that if he has 90 complaints and 80 of them are resolved in the CRI stage and don't even get to probable cause, it's worth having two different bullets.

The EDLC further stated that it was a priority statement, not a "this is how we do it" statement. Staff is trying to simply say we have these cases, we have RFA, we have CRI's and then another high priority is we got probable cause and then take it to NOAV.

Commissioner Suemori asked the EDLC what were the non-priorities. The EDLC responded that those were the top priorities and that staff had been dealing with RFAs and CRIs, and that staff tried to get rid of cases that were not within its jurisdiction, or de minimis, or did not have sufficient proof.

Vice Chair Lilly asked the EDLC if there were written guidelines or if it was his own procedure. The EDLC confirmed, and also informed the Commission that it was provided to Ms. Elento-Sneed and that staff could provide them with a copy. The EDLC explained that he was hesitant in his response since it's been so ingrained in him and that it's relatively straight forward. The EDLC further stated that in working with former Investigator DeCaires and Investigator Shanafelt, he and Ms. DeCaires were giving Investigator Shanafelt CRI's on what focus he needed, and at the same time they didn't want to give him 50 cases at one time. The EDLC informed the Commission that when Investigator Shanafelt finishes some cases, he assigns him a couple of more cases.

Vice Chair Lilly stated that the EDLC's secondary priority, the first bullet, "developing the Pre-Hearing and Hearing Process," should be a high priority, and the EDLC agreed. Vice Chair Lilly continued that he did not know how the Commission felt, but contended it should be a high priority since it impacts how staff and the Commission process the NOAV.

Commissioner Suemori commented that the all employee Ethics training program is basically "no work," and further stated that it should be at the highest priority. Commissioner Suemori added that she needed to figure out, on a day-to-day basis, what is a high priority and

what is a low priority and that conducting an all employee's ethics training should be high priority.

The EDLC explained that you cannot just "give it out," you have to give the hour training.

Commissioner Suemori then stated that she is not disagreeing, and Vice Chair Lilly asked if her clarification was for the present fiscal year. Commissioner Suemori responded that it was for the remainder of the fiscal year or for the whole fiscal year through June to 2017, and that it should be a high priority, rather than getting general and timely responses to RFAs and CRIs. She continued that the third priority would be the NOAV and Contested Case Hearings. The second priority would be implementing improvements to pre-hearings and hearings, as well as the intake process, which would be a formulation of the aforementioned priorities. Commissioner Suemori concluded that staff should have time requirements, and asked how it should be done and what would be a measurable evaluation that the EDLC was trying to prioritize, and in what order.

Vice Chair Lilly asked the Commission if they had any other thoughts.

Commissioner Suemori asked the Commission to move from the subject.

Vice Chair Lilly stated that he saw a difference between, "here are the categories of the high priorities and secondary priorities for the fiscal year," and that within in any given day, week, or month, you're going to have pass. Commissioner Silva interjected a need for flexibility. Vice Chair Lilly continued that there would be a need to prioritize, and Commissioner Suemori responded that there is a need for highest priorities for the next 18 months. Commissioner Silva added that priorities will change, and Commissioner Suemori agreed.

Commissioner Silva stated that there is definitely a need for flexibility, since the Commission is not moving forward and they can say they'll take care of certain issues within six months, but it may end up being a year before they can get to other cases. Commissioner Suemori responded that they are lucky enough to have 18 months, because looking at an 18-month calendar, until June 2017, they have no knowledge of what priorities will occur and that it is not a measurable success. Vice Chair Lilly asked if she was asking staff to provide the Commission a report on how they will fulfill and achieve those priorities.

The EDLC stated that staff can put something together, regarding time frames for the RFAs and CRIs and whether an all employee's training program could be done .

Vice Chair Lilly asked the EDLC if he would be reporting on those, and the EDLC confirmed.

Vice Chair Lilly asked the EDLC for clarification on receipt of a complaint or RFA and if it goes into the inquiries log, and whether he was able to tell the Commission, at any

given moment, how many outstanding issues staff was working on, and the EDLC confirmed. Vice Chair Lilly also asked the EDLC if the Commission would be able to know how many matters had been closed in a particular time, and the EDLC confirmed. Vice Chair Lilly further asked how many were aging (six months, three months old), and the EDLC also confirmed, as well as informed the Commission that he did not have the information, since the Department of Information Technology (“DIT”) would need to change the excel spreadsheet. The EDLC continued that the aging requires one of the Staff members to sit down and do it manually. Vice Chair Lilly asked if staff can do that because it would be valuable to the Commission. The EDLC confirmed and further stated that he had met with Chair Marks after the last meeting, and that was one of the factors staff discussed with DIT.

Vice Chair Lilly asked the Commission if they had any issues regarding the EDLC’s report, and that they had already gone through Agenda Item B.1.

Commissioner Yuen commented that the Commission needed to be careful because there is a fine line between over-seeing and governance versus micro-managing. He continued that they would need to keep in mind that the Commission can always make adjustments along the way with this amount of work.

Commissioner Suemori agreed and stated that she wants to know the measurable goals and the success goals. She further stated that as a group, the Commission had to come to an agreement on goals and priorities. Vice Chair Lilly stated that as a Commission, they should decide on the main priorities, and thereafter the EDLC can carry it out. The EDLC agreed, but he was being careful in using the term “staff priorities,” since the Commission might want to shift priorities around, depending on what’s happening.

Vice Chair Lilly stated that he wanted to have those pre-hearing procedures out as a high priority, since it would drive-out a lot of other things. Commissioner Suemori responded that it would be a second priority. Vice Chair Lilly agreed, and further stated that the pre-hearing procedures are needed before it can to a contested case hearing. Commissioner Suemori then stated that it should move from second priority to above the third highest priority, and Vice Chair Lilly and the EDLC agreed.

Commissioner Suemori asked if the EDLC could combine the timely responses, the formulating process, the pre-hearing and hearing process into an “operating manual,” to include the process for intake on how a case goes through the office, as well as the definitions of an RFA and CRI. She further stated that the case intake process is for staff to process and later for them to over-see, and that there needs to be an operation manual in writing. The EDLC responded that he would need some direction.

Vice Chair Lilly informed the Commission that unless anyone disagreed, he agreed with Commissioner Suemori and that the procedures should be number two in the highest priority. Vice Chair Lilly further stated that the ALC was working on the procedures and that it needed to get finalized as soon as possible. Commissioner Suemori stated that Vice Chair was collapsing bullet 2, bullet 3 was of highest priority, and bullet 1 was secondary. The EDLC

stated that bullet 1 in secondary is a different issue because it's looking at the rules. Commissioner Suemori stated that it was up to Vice Chair Lilly because it was what he wanted.

The EDLC stated that he needed some real specifics because it was easy to say "implements improvements," which was a very generic title. The EDLC further explained that it was made generic because there was a need to have some flexibility, but if they're talking about looking at the rules, for instance, the Commission needs to give him an example. The EDLC continued that at present, he had instructed staff not to do any NOAVs because there is no right to discovery after an NOAV is filed. The EDLC further contends that if it's a higher priority, it's easy to put it up, but does the Commission want the rules to be reviewed? Commissioner Suemori responded in agreement. The EDLC informed the Commission that the law student intern, Derek Simon, would be handling the matter. Commissioner Suemori asked if it would be completed by April, and Vice Chair Lilly responded that Derek Simon would be providing a compilation and recommendations, a that it was a very high priority.

Vice Chair Lilly asked the Commission if there were any questions regarding the EDLC's report. For Items 6 and 7, Vice Chair Lilly announced that testimony from Natalie Iwasa had been received, and that each Commissioner received a copy, and the Commissioners confirmed.

2. Work Reports from Staff Members.

No discussion.

3. General Statistics: Pending Complaints Requiring Investigation and Requests for Advice as of the End of Last Month.

No discussion.

4. Additional Workload Statistics.

No discussion.

5. Current Fiscal Year Budget Issues.

No discussion.

6. Fiscal Year 2017 Budget.

No discussion.

7. Ethics Training Program.

No discussion.

8. Report on the Ethics Commission's Proposed Charter Amendment Before the Charter Commission, and Other Proposals Affecting the Ethics Laws.

No discussion.

9. Gift Guide Newsletter.

No discussion.

10. Quarterly Newsletter.

No discussion.

- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly suggested deferring this item, since the Commission had received additional materials to look at. Unless the Commission wanted to discuss, he needed to review the departments' evaluation forms and the performance evaluation policy.

The EDLC informed the Commission that staff had not received the Liquor Commission's evaluation for the Liquor Control Administrator, its counter-part. Vice Chair Lilly asked the EDLC if he could scan and email to him when received, and the EDLC confirmed.

Vice Chair Lilly asked the Commission if they had any questions, and since there were none, the Commission had no further discussion.

- III. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

At 11:59 a.m., Commissioner Suemori moved to exit open session and enter into executive session. Commissioner Silva seconded. All were in favor, and the motion carried unanimously.

At 12:05 p.m., staff left the Conference Room for the Commission to discuss Items B., C., and E. privately.

At 12:46 p.m., Staff returned to the Conference Room.

Vice Chair Lilly reported the following:

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, 2016 Meeting.

The Commission deferred the item.

- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures.

The Commission approved the hiring of an investigator.

- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Regarding Processing Ethics Complaints Against Certain City Agency Personnel.

The Commission deferred the item.

- D. For Discussion: Pursuant to HRS Sec. 92-5(a)(4), Regarding Issues Raised in the Memorandum Dated January 8, 2016 to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission, from Deputy Corporation Counsel Duane W.H. Pang, Department of Corporation Counsel

The Commission had a discussion.

- E. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status as to the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

The Commission deferred the item.

- F. For Discussion and Action: Pursuant to HRS Sec. 92-6(a)(2), Regarding the Commission's Adjudicatory Functions, Status of Ongoing Cases and/or Prehearing Conferences.

The Commission deferred the item.

IV. ADJOURNMENT

Commissioner Suemori moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion carried.

The meeting adjourned at approximately 12:50 p.m.